IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION

CONTEMPT PETITION NO. 43 OF 1991

Bapu Shivram Pawar .. Petitioner

Vs.

Pratap Rao Deshmukh and Ors. .. Respondents

None for the Petitioner.
Mr. A.J. Bhor for BMC.

CORAM: B.H. MARLAPALLE, J.

Date : October 05, 2005.

ORAL JUDGMENT:

1. This Contempt Petition arises from the ad-interim order passed by the learned Judge of the City Civil Court at Mumbai on 15/2/1991. It is alleged that an ad-interim restraining order against the officers of the Corporation was passed and they were prevented from demolishing the construction undertaken by the petitioner. By its notice dated 14/2/1991 the Corporation had informed the petitioner that inspite of the earlier notice issued under Section 354-A of the Mumbai Municipal Corporation Act, 1888, the petitioner had continued with further construction and, therefore, all the constructions would be removed/demolished. He challenged the said

notice in L.C. Suit No.1462 of 1991. It is further submitted that the ad-interim order passed on 15/2/1991 in the said suit was served on the officers of the Corporation and particularly those who have impleaded as respondents in this petition on 16/2/1991. Though such an order was passed and served, the officers proceeded to demolish the structure at about 1.30 p.m. on 16/2/1991.

2. The copy of the order dated 15/2/1991 annexed to the petition memo shows that the said order was passed at 8.55 p.m. by the learned Judge at her residence and it is admitted by the plaintiff that copies of the said order were served on the officers of the Corporation on the next day. In the entire petition memo it is not stated whether these copies were served before 1.30 p.m. on 16/2/1991 when the notice structure was already removed. On such vague pleadings cause of action cannot be ascertained so as to take cognizance of the alleged contempt and punish the officers of the Corporation who are public servants required to perform their statutory duties. The learned counsel for the petitioner remained absent. This court had appointed a Court Commissioner

who submitted his report dated 22/3/1991. He has pointed out that the Corporation had not demolished the structures which were constructed as per the permission and what was demolished was the additional structures. The Commissioner's report also does not indicate as to when exactly the additional structures were also demolished. Cause of action would arise for taking cognizance of contempt only if it was specifically stated that the structures were demolished inspite of service of the order passed by the Court below on 15/2/1991.

3. In the premises, this contempt petition fails and the same is hereby dismissed. Rule is discharged.

(B.H. Marlapalle,J.)